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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,427	03/26/2004	Eric Hamilton	18602-08744 (P3257US1)	2639
61520	7590	12/23/2008	EXAMINER	
APPLE/FENWICK			RAO, ANAND SHASHIKANT	
SILICON VALLEY CENTER				
801 CALIFORNIA STREET			ART UNIT	PAPER NUMBER
MOUNTAIN VIEW, CA 94041			2621	
			MAIL DATE	DELIVERY MODE
			12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/811,427	HAMILTON ET AL.	
	Examiner	Art Unit	
	Andy S. Rao	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12/12/08.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 16-31 is/are allowed.
 6) Claim(s) 1-15 and 32-39 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/12/08 has been entered.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-15 are rejected under 35 U.S.C. 101 as not falling within one of four statutory categories of inventions. Supreme Court precedent and recent Federal Circuit decisions indicate a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. For example there is no apparatus mentioned either in the preamble nor in the subsequent limitations for executing all of the steps of the method (a video camera is recited, but it is only a component for executing the method), nor can the determination of a buffer size be

considered a transformation of an article or material, *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

4. Claims 32-39 are rejected under 35 U.S.C. 101 because they are directed towards nonstatutory subject matter.

A). The Examiner notes that “containing a computer program product...” does not specify how the instructions are (a) associated with the medium, or (b) the nature of instructions. Data structures not claimed as embodied (or encoded with or embedded with) in a computer readable medium are descriptive material *per se*, and are not statutory, *Warmerdam*, 33 F.3d at 1361, 31, USPQ2d at 1760). Specifying the association in the manner listed above would sufficiently address the first condition. Similarly, computer programs claimed as computer listings, instructions, or codes are just the descriptions, expressions, of the program are not “physical things”. They have neither computer components nor statutory processes, as they are not “acts” being performed, but only become statutory subject matter when recited as a computer element which defines structural and function interrelationships between the computer program and the rest of the computer, *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035., *Interim Guidelines, Annex IV (Section a)*.

Corrections to the claims, and supporting specification are required.

Allowable Subject Matter

5. Claims 16-31 are allowed.

Independent claim 16 and 24 are a computer system for video encoding and specific “...determining a quant with which to encode the frame, the quant being a function of at least the

buffer's fullness, a base quant envelope and a base quant envelope control associated with the frame, wherein the base quant and the base quant envelope control are based on the type of the frame, and the fluctuation of the base envelope is controlled by the base envelope control; encoding the frame according to the determined quant; and updating the fullness of the buffer based on any over/underused bits for the frame..." which are features that are not anticipated nor obvious over the art of record. Dependent claims 17-23, and 25-31 are allowed for the reasons concerning the independent claims.

6. Claims 1-15 and 32-39 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

Independent claim 1 and 32 are directed towards a method and a computer implemented method for video encoding and include "...determining a quant with which to encode the frame, the quant being a function of at least the buffer's fullness, a base quant envelope and a base quant envelope control associated with the frame, wherein the base quant and the base quant envelope control are based on the type of the frame, and the fluctuation of the base envelope is controlled by the base envelope control; encoding the frame according to the determined quant; and updating the fullness of the buffer based on any over/underused bits for the frame..." which are features that are not anticipated nor obvious over the art of record. Dependent claims 2-15 and 33-39 would be allowed for the reasons concerning these independent claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andy S. Rao whose telephone number is (571)-272-7337. The examiner can normally be reached on Monday-Friday 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571)-272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andy S. Rao
Primary Examiner
Art Unit 2621

asr
/Andy S. Rao/
Primary Examiner, Art Unit 2621
December 19, 2008